IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-080060 TRIAL NO. 07CRB-26665
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
RAYMOND HILVERT,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Raymond Hilvert was convicted of sexual imposition, a violation of R.C. 2907.06(A)(1). He now appeals, raising three assignments of error.

In his first assignment of error, Hilvert argues that his conviction was not supported by sufficient evidence. Sufficiency is a test of adequacy—the evidence, when viewed most favorably to the state, must establish each element of the offense beyond a reasonable doubt.[2]

R.C. 2907.06(A)(1) proscribes, in relevant part, sexual contact with a nonspouse when the offender is reckless with regard to whether that contact is offensive. A defendant cannot be convicted of violating R.C. 2907.06(A)(1) "solely upon the victim's testimony

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.
[2] See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

unsupported by other evidence."[3] Hilvert alleges that the state failed to prove that he was reckless with regard to whether the contact was offensive. We disagree.

Cincinnati Police Officer Robert Watkins testified that he and his partner, Officer Marty Polk, had been working undercover in Mt. Airy Forest, a public park located in Hamilton County, when Hilvert grabbed Officer Watkins's genitals. The contact occurred in the middle of the afternoon in an area known for homosexual activity.

Before the contact, Hilvert had passed Watkins on a hiking trail and then had stopped on a narrow foot bridge. When Watkins caught up to him, the men had a short conversation while separated by a distance of three feet. According to Watkins, both men asked if the other was a police officer, but the conversation and encounter had not been sexually charged until Hilvert asked, "[I]s there anything special that you want to start with?" Watkins claimed that he had responded with a "funny" look and a shrug of his shoulders, as if he had not understood the inquiry. Hilvert then moved closer to Watkins and fondled his genitals. Watkins testified that this contact was offensive and extremely inappropriate under the circumstances.

After arresting Hilvert, a Hamilton County deputy, Watkins called Officer Polk on his cellular phone and informed him of the arrest.

Officer Polk confirmed at trial that he had been working on the vice patrol with Watkins on the day of Hilvert's arrest. He testified that they had been working in different sections of the park for about twenty minutes when he received a call from Watkins about an arrest. Polk described Watkins's demeanor as "excited." Additionally, Polk testified that Hilvert had admitted to the sexual contact during a post-arrest interview. In the interview, Hilvert did not state that the conversation had been sexual, only that Officer

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[3] R.C. 2907.06(B).

Watkins had asked him if he were a police officer and that he had inquired the same of Officer Watkins before the contact.

After viewing this evidence in the light most favorable to the state, we conclude that it supported a finding that Hilvert had acted recklessly with regard to whether the contact was offensive.

Additionally, the state met the statutory corroboration requirement. Hilvert contends that the state was required to specifically corroborate Watkins's testimony that he found the contact offensive. But Hilvert construes the corroboration requirement too broadly. The Ohio Supreme Court has declared that the state's burden is minimal: "[t]he corroborating evidence necessary to satisfy R.C. 2907.06(B) need not be independently sufficient to convict the accused, and it need not go to every essential element of the crime charged. Slight circumstances or evidence which tends to support the victim's testimony is satisfactory."[4] We hold that Officer Polk's testimony concerning Officer Watkins's demeanor after the contact and Hilvert's post-arrest statement sufficiently corroborated Watkins's testimony for purposes of R.C. 2907.06(B). Thus, the record contains sufficient evidence to support the conviction.

In his second assignment of error, Hilvert argues that his conviction was against the manifest weight of the evidence. Hilvert testified in his defense that the pre-contact conversation and encounter had been overtly sexual from both participants and that Officer Watkins did not protest and actually encouraged the touching. He maintains that this evidence and the area's reputation for sexual activity weighed against a conviction.

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[4] *State v. Economo*, 76 Ohio St.3d 56, 1996-Ohio-426, 666 N.E.2d 225, syllabus.

But determining the credibility of witnesses is primarily for the trier of fact.[5] The trial court disbelieved Hilvert's trial testimony, which differed from his post-arrest statement to Officer Polk and conflicted with Officer Watkins's testimony. In light of this, we cannot say that the trial court clearly lost its way and created a manifest miscarriage of justice in finding Hilvert guilty.[6]

In his final assignment of error, Hilvert argues that he was denied his right to a fair trial when the trial court invoked the excited-utterance exception to the hearsay rule[7] and allowed Officer Polk to testify to what Officer Watkins had told him over the phone. Officer Watkins had said to Officer Polk, "I got an arrest, get me somebody here right now," and indicated that his arrestee was a corrections officer. The state elicited this testimony to show that Officer Watkins had immediately reported the offense, thus corroborating that he had found the contact offensive.

Hilvert advocates for a rule prohibiting the consideration of a police officer's post-arrest statements as excited utterances. The state, however, emphasizes that such a rule would not be appropriate in this case because the officer was actually the victim of the sexual contact. Further, the state contends that the statement qualified as an excited utterance because Officer Watkins made the statement under the stress of excitement that had been caused by the sexual contact, immediately after the contact without intervening circumstances, and because the statement related to the contact, which was a startling event.

After reviewing the testimony and the law, we determine that the trial court reasonably exercised its discretion by qualifying Watkins's statement as an excited

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[5] *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.
[6] *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.
[7] Evid.R. 803(2).

utterance.[8] Thus, the statement was admissible. And even if we were to hold otherwise, any error in admitting this part of Officer Polk's testimony was harmless where the corroboration requirement was met by other evidence.

We hold that the assignments of error are meritless. Accordingly, we overrule them and affirm Hilvert's conviction.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

HILDEBRANDT, P.J., CUNNINGHAM and **DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on December 17, 2008
per order of the Court _____.
Presiding Judge

[8] *State v. Taylor* (1993), 66 Ohio St.3d 295, 303-304, 612 N.E.2d 316.